

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Expedited Penalty Agreement
(LAC 33:I.801 and 807; VII.115 and 315; and XI.703) (MM004)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.801 and 807; VII.115 and 315; and XI.703 (Log #MM004).

This rule makes additions to the the list of violations that may qualify for expedited penalties in LAC 33:I.807, clarifies existing violations, and adjusts penalty amounts to be consistent across media for similar violations. Other environmental regulations are amended in relation to these changes. The structure of the expedited penalties table is changed to divide it into separate tables by media and type to facilitate printing. The additions to the qualifying violations will abate delays that have occurred in correcting violations of the Environmental Quality Act concerning the unauthorized transporting, disposal, and/or burning of solid wastes, violations of the UST delivery prohibition rule required by the federal Underground Storage Tank Compliance Act of 2005, and other various violations of the environmental quality regulations. Delays in enforcement reduce the effectiveness of the enforcement action, unnecessarily utilize resources, and slow down the enforcement process. The Expedited Penalty Agreement program provides an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The Expedited Penalty Agreement program is a flexible program that will be continually expanded to accommodate minor to moderate violations of the regulations. This rule promulgates the provisions in Emergency Rule MM004E3, which was effective on March 15, 2008, and published in the March 20, 2008, issue of the *Louisiana Register*. The basis and rationale for this proposed rule are to abate the delay in correcting minor and moderate violations of the Environmental Quality Act to achieve expeditious protection of the public health and the environment. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on May 27, 2008, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A.

Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by MM004. Such comments must be received no later than June 3, 2008, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of MM004. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY

Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§801. Definitions

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LAR050000—an LPDES multi-sector storm water general permit.

LAR100000—an LPDES storm water general permit associated with construction activity greater than 5 acres.

LPDES General Permit—for the purposes of this Chapter, any Louisiana Pollutant Discharge Elimination System Permit in the LAG530000, LAG540000, or LAG750000, ~~LAR050000, or LAR100000~~ series.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

EXPEDITED PENALTIES			
ALL MEDIA			
Violation	Citation	Amount	Frequency
* * *			
[See Prior Text]			

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
<u>Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.</u>	<u>LAC 33:III.501.C.4</u>	<u>\$250</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
<u>Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.</u>	<u>LAC 33:III.501.C.4</u>	<u>\$350</u>	<u>Per occurrence</u>
<u>40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.</u>	<u>LAC 33:III.501.C.4</u>	<u>\$500</u>	<u>Per occurrence</u>
<u>Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.</u>	<u>LAC 33:III.501.C.4</u>	<u>\$750</u>	<u>Per occurrence/ emission point</u>
<u>Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.</u>	<u>LAC 33:III.507.E.4</u>	<u>\$1,000</u>	<u>Per occurrence</u>
<u>Failure to provide notice of change of ownership within 45 days after the change.</u>	<u>LAC 33:III.517.G</u>	<u>\$200</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence
Failure to provide notice of change of ownership within 45 days after the change.	LAC 33:III.517.G	\$200	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	<u>LAC 33:III.5107</u>	<u>\$500</u>	<u>Per occurrence</u>
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence
Failure to submit a perchloroethylene usage report by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence

EXPEDITED PENALTIES
AIR QUALITY—Stage II Vapor Recovery

Violation	Citation	Amount	Frequency
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	<u>LAC 33:III.905</u>	<u>\$300</u>	<u>Per occurrence</u>
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$200 \$300	Per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	<u>LAC 33:III.905</u>	<u>\$100</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
HAZARDOUS WASTE—Used Oil			
Violation	Citation	Amount	Frequency

EXPEDITED PENALTIES			
HAZARDOUS WASTE—Used Oil			
Violation	Citation	Amount	Frequency
* * *			
[See Prior Text]			

EXPEDITED PENALTIES			
SOLID WASTE			
Violation	Citation	Amount	Frequency
<u>Unauthorized on-site disposal of regulated solid waste generated at the site by the owner, lessee, or other person having an actual right, title, or interest in the property.</u>	<u>LAC 33:VII.315.C</u>	<u>\$250</u>	<u>Per occurrence</u>
<u>Unauthorized disposal of solid waste by the generator at an off-site location not permitted to receive such waste.</u>	<u>LAC 33:VII.315.C</u>	<u>\$250</u>	<u>Per occurrence</u>
<u>Operation of an unauthorized disposal site where solid waste is disposed.</u>	<u>LAC 33:VII.315.C</u>	<u>\$1,000</u>	<u>Per occurrence</u>
<u>An owner, lessee, or other person having an actual right, title, or interest in the property of an unauthorized disposal site in which solid waste is disposed.</u>	<u>LAC 33:VII.315.C</u>	<u>\$1,000</u>	<u>Per occurrence</u>
<u>Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.</u>	<u>LAC 33:VII.315.FK</u>	<u>\$500</u>	<u>Per occurrence</u>
<u>Open burning of solid waste as prohibited by regulation.</u>	<u>LAC 33:VII.315.M</u>	<u>\$250</u>	<u>Per occurrence</u>
<u>Offering residential solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste.</u>	<u>LAC 33:VII.315.O</u>	<u>\$250</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
SOLID WASTE			
Violation	Citation	Amount	Frequency
<u>Offering commercial solid waste and/or construction and demolition debris to an unauthorized transporter and/or a facility not permitted to receive such waste.</u>	<u>LAC 33:VII.315.O</u>	<u>\$500</u>	<u>Per occurrence</u>
<u>Offering industrial solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste.</u>	<u>LAC 33:VII.315.O</u>	<u>\$750</u>	<u>Per occurrence</u>
<u>Failure to notify the department of generating, transporting, processing, or disposing of solid waste.</u>	<u>LAC 33:VII.401.A</u>	<u>\$300</u>	<u>Per occurrence</u>
<u>Transportation of solid waste to a processing or disposal facility not permitted to receive such waste.</u>	<u>LAC 33:VII.505.D</u>	<u>\$1,000</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$300 \$200	Per occurrence
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G; <u>10519.O and P</u>	\$200	Per occurrence

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to collect appropriate waste tire fee for each tire sold.	<u>LAC 33:VII.10519.C;</u> <u>10521.B; 10535.B</u>	<u>\$200</u>	<u>Per occurrence</u>
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D; <u>10521.C</u>	\$200 \$100	Per occurrence
Failure to post required notifications to the public.	LAC 33:VII.10519.E; <u>10521.D</u>	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F; <u>10521.E</u>	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H; <u>10521.H</u>	\$200	Per occurrence
<u>Storing waste tires for more than 120 days without complying with the exceptions for the extended storage time.</u>	<u>LAC 33:VII.10519.I</u>	<u>\$200</u>	<u>Per occurrence</u>
<u>Failure to use an authorized transporter for removal of tires from a place of business.</u>	<u>LAC 33:VII.10519.K</u>	<u>\$500</u>	<u>Per occurrence</u>
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
<u>Failure of a motor vehicle dealer to notify administrative authority within 30 days of commencing business operations.</u>	<u>LAC 33:VII.10521.A</u>	<u>\$300</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10535.B	\$200	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$1,000 \$300	Per occurrence
Failure of out-of-state or out-of-country transporter to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to affix to driver's door and passenger's door the authorization certificate number, 3 inches in height.	LAC 33:VII.10523.F	\$100	Per occurrence
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
<u>Acceptance by a processor of more than five unmanifested tires per day per customer.</u>	<u>LAC 33:VII.10525.A.2</u>	<u>\$300</u>	<u>Per occurrence</u>
<u>Failure of a processor to maintain a log for all unmanifested loads.</u>	<u>LAC 33:VII.10525.A.2</u>	<u>\$200</u>	<u>Per occurrence</u>
<u>Failure to meet any of the facility standards listed in LAC 33:VII.10525.D.</u>	<u>LAC 33:VII.10525.D</u>	<u>\$300</u>	<u>Per occurrence</u>
Failure by a collector or collection center to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operator to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
<u>A collector or collection center exceeding the storage limit of waste tires or waste tire material.</u>	<u>LAC 33:VII.10527.C; 10531.C</u>	<u>\$300</u>	<u>Per occurrence</u>
Failure of recycler to provide notification of its existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of a waste tire or waste tire material recycler to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
<u>Failure to follow the requirements for manifest discrepancies.</u>	<u>LAC 33:VII.10533.C</u>	<u>\$300</u>	<u>Per occurrence</u>
<u>Failure to provide a manifest for all waste tire shipments containing more than 20 tires.</u>	<u>LAC 33:VII.10533.A</u>	<u>\$200</u>	<u>Per occurrence</u>
<u>Failure to follow the requirements for manifest discrepancies.</u>	<u>LAC 33:VII.10533.C</u>	<u>\$300</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
<u>Failure to maintain completed manifests for three years and have them available for inspection.</u>	<u>LAC 33:VII.10533.D</u>	<u>\$200</u>	<u>Per occurrence</u>

EXPEDITED PENALTIES			
WATER QUALITY			
Violation	Citation	Amount	Frequency
<u>Failure to develop a Spill Prevention and Control (SPC) plan for any applicable facility.</u>	<u>LAC 33:IX.905</u>	<u>\$500</u>	<u>Per occurrence</u>
<u>Failure to implement any component of an SPC plan.</u>	<u>LAC 33:IX.905</u>	<u>\$100</u>	<u>Per occurrence</u>
<u>Unauthorized discharge of oily fluids.</u>	<u>LAC 33:IX.1701.B</u>	<u>\$1,000</u>	<u>Per occurrence</u>
<u>Unauthorized discharge of oil field wastes, including produced water.</u>	<u>LAC 33:IX.1901.A</u>	<u>\$1,000</u>	<u>Per occurrence</u>
<u>Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.</u>	<u>LAC 33:IX.2511.C.1</u>	<u>\$1,000</u>	<u>Per occurrence</u>
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$200 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	More than 10 violations

EXPEDITED PENALTIES			
WATER QUALITY			
Violation	Citation	Amount	Frequency
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$300 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$500 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility.	LAC 33:IX.905	\$500	Per occurrence

EXPEDITED PENALTIES			
WATER QUALITY			
Violation	Citation	Amount	Frequency
2. Failing to implement any component of an SPC plan.	LAC 33:IX.905	\$100	Per occurrence
<u>Failure to comply with monitoring requirements of LPDES Storm Water General Permits LAR050000 and LAR100000.</u>	<u>LAC 33:IX.2701.A</u>	<u>\$300</u>	<u>Per occurrence</u>
Failure to submit certain reports as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801, including noncompliance reports, storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), a Pollution Prevention Plan (PPP), or a Best Management Practices (BMP) Plan (BMP) as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801.	LAC 33:IX.2701.A	\$500	Per occurrence
Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence

EXPEDITED PENALTIES			
WATER QUALITY			
Violation	Citation	Amount	Frequency
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to register an existing or new UST containing a regulated substance.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$200 \$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
<u>Allowing a regulated substance to be placed into a new UST system that has not been registered.</u>	<u>LAC 33:XI.301.C.4</u>	<u>\$300</u>	<u>Per inspection</u>
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$500 \$250 and completion of a department-sponsored compliance class	Per inspection

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$500 \$100 and completion of a department-sponsored compliance class	Per inspection
Failure to provide spill and/or overfill prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
<u>Failure to ensure that the individual exercising supervisory control over installation-critical junctures is certified in accordance with LAC 33:XI Chapter 13.</u>	<u>LAC 33:XI.303.B.4.b.ii</u>	<u>\$1,000</u>	<u>Per occurrence</u>
Failure to upgrade an existing UST system to new system standards as specified.	LAC 33:XI.303.C	\$1,300 \$500 and completion of a department-sponsored compliance class	Per inspection
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report, investigate, and/or clean up any spill and/or overfill.	LAC 33:XI.501.C	\$500 \$1,500	Per inspection
<u>Failure to investigate and/or clean up any spill and/or overfill.</u>	<u>LAC 33:XI.501.C</u>	<u>\$1,500</u>	<u>Per inspection</u>
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300 and completion of a department-sponsored compliance class	Per inspection

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to have a UST system equipped with a cathodic protection system inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$300 \$500 and completion of a department-sponsored compliance class	Per inspection
Failure to inspect a UST system with an impressed current cathodic protection system every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with recordkeeping requirements.	LAC 33:XI.503.B	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection
<u>Failure to ensure that the individual exercising supervisory control over repair-critical junctures is certified.</u>	<u>LAC 33:XI.507.A.2</u>	<u>\$1,000</u>	<u>Per occurrence</u>
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509. <u>B and C</u>	\$200 \$300 and completion of a department-sponsored compliance class	Per inspection
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701; <u>703.A.2.b and c</u>	\$750 and completion of a department-sponsored compliance class	Per inspection

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500 and completion of a department-sponsored compliance class	Per inspection
Failure to <u>monitor tanks for releases</u> satisfy the additional requirements for petroleum UST systems as specified.	LAC 33:XI.703.B.1	\$350 and completion of a department-sponsored compliance class	Per inspection
<u>Failure to monitor underground piping for releases as specified.</u>	<u>LAC 33:XI.703.B.2</u>	<u>\$750 and completion of a department-sponsored compliance class</u>	<u>Per inspection</u>
Failure to maintain release detection records.	LAC 33:XI.705	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.32 or 707	\$500 and completion of a department-sponsored compliance class	Per occurrence
Failure to investigate and confirm any suspected release of a regulated substance that requires reporting under LAC 33:XI.707 within seven days.	LAC 33:XI.711	\$1,500	Per occurrence

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with permanent closure and/or changes in service procedures.	LAC 33:XI.905	\$500	Per inspection
<u>Failure to use a certified worker for tank closure.</u>	<u>LAC 33:XI.905.A.2</u>	<u>\$1,000</u>	<u>Per inspection</u>
<u>Failure to assess the site at closure or change-in-service where contamination is most likely to be present.</u>	<u>LAC 33:XI.907.A</u>	<u>\$500</u>	<u>Per occurrence</u>
<u>Failure to submit the assessment in duplicate within 60 days following permanent closure or change-in-service.</u>	<u>LAC 33:XI.907.A</u>	<u>\$500</u>	<u>Per occurrence</u>
<u>Failure to begin corrective action of contaminated soils, contaminated groundwater, or free product discovered through methods in LAC 33:XI.907.A, in accordance with LAC 33:XI.715.</u>	<u>LAC 33:XI.907.B</u>	<u>\$1,500</u>	<u>Per occurrence</u>

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Transport—to move ~~industrial solid waste off-site and/or to move solid waste of a commercial establishment or more than one household~~ to a non-processing transfer station or a collection, processing, or disposal facility.

Transporter—any person who moves ~~industrial solid waste off-site and/or who moves solid waste of a commercial establishment or more than one household to a non-processing transfer station or a collection, processing, or disposal facility, excluding individuals who transport their own residential waste to a collection facility, non-processing transfer station, or permitted processing facility and/or solid waste landfill.~~

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:**.

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

A. - N.2. ...

O. Generators shall not offer solid waste to transporters, processing facilities, or disposal facilities that have not received authorization and/or the required permits necessary to receive and/or manage the generator's solid waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 34:**.

Part XI. Underground Storage Tanks

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§703. Requirements for Use of Release Detection Methods**A. Requirements for All UST Systems**

1. Owners and operators of all new and existing UST systems must use a method or combination of the methods of release detection described in LAC 33:XI.701 ~~that meets the following requirements.~~

2. The method of release detection used must also meet the following requirements.

a. The release detection method(s) used must be capable of detecting a release from any portion of the tank and the connected underground piping that routinely contains product.

b. The release detection system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

c. The release detection system must meet the performance requirements in LAC 33:XI.701.A or B, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method, except for methods permanently installed before that date and in compliance with LAC 33:XI.701, must be capable of detecting the leak rate or quantity specified for that method in LAC 33:XI.701.A.2, 3, and 4 or B.1 and 2 (as shown in the table below) with a probability of detection (Pd) of at least 0.95 and a probability of false alarm (Pfa) of no greater than 0.05.

Method	Section	Date after Which Pd/Pfa Must Be Demonstrated
Manual Tank Gauging	LAC 33:XI.701.A.2	December 22, 1990
Tank Tightness Testing	LAC 33:XI.701.A.3	December 22, 1990
Automatic Tank Gauging	LAC 33:XI.701.A.4	December 22, 1990
Automatic Line Leak Detectors	LAC 33:XI.701.B.1	September 22, 1991
Line Tightness Testing	LAC 33:XI.701.B.2	December 22, 1990

32. When a release detection method operated in accordance with the performance standards in LAC 33:XI.701.A and B indicates that a release may have occurred, owners and operators must notify the Office of Environmental Compliance in accordance with LAC 33:XI.707-713.

43. Owners and operators of all UST systems must comply with the release detection requirements of LAC 33:XI.701-705 by December 22 of the year listed in the following table.

Schedule for Phase-In of Release Detection					
Year System Was Installed	Year When Release Detection Is Required (By December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	

Schedule for Phase-In of Release Detection					
Year System Was Installed	Year When Release Detection Is Required (By December 22 of the year indicated)				
	1989	1990	1991	1992	1993
1980-88		P			RD
New Tanks	Immediately upon installation.				
P = Must begin release detection for all pressurized piping in accordance with LAC 33:XI.703.B.2.a.					
RD = Must begin release detection for tanks and suction piping in accordance with LAC 33:XI.703.B.1, 2.b, and C.					

54. Any existing UST system that cannot apply a method of release detection that complies with the requirements of LAC 33:XI.701-705 must complete the closure procedures in LAC 33:XI.Chapter 9 by the date on which release detection is required for that UST system under Paragraph A.43 of this Section.

B. – C.2.e.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULESLOG #: MM004

Person
Preparing
Statement: Sharon Parker
Sharon.Parker@la.gov (email) Dept.: Environmental Quality

Phone: 225-219-3559 Office: Environmental Compliance

Return
Address: P.O. Box 4302
Baton Rouge, LA 70802-4302 Rule
Title: Expedited Penalty Amendments and
Updates (LAC 33:I.801 and 807; VII.115 and
315; and XI.703)

Date Rule
Takes Effect: Upon Promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS
(Summary)

The proposed rule will enhance the current Expedited Penalty Agreement program with no additional cost. The program has already produced a significant decrease in the backlog of enforcement action referrals for the minor and moderate categories of violations this proposed rule addresses. Many prior enforcement referrals for minor and moderate violations had not been addressed in a timely manner due to more complex enforcement issues taking precedence. The ability to address these classes of violations with expedited penalty agreements has resulted in savings in staff time and paperwork.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS
(Summary)

The violations being added to the Expedited Penalty Agreement program by the proposed rule do not impose high-value penalties, and, experience has shown, will have a higher rate of collection as a result of the Expedited Penalty Agreement program. Therefore, there will be a minimal increase in revenue to the department.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-
GOVERNMENTAL GROUPS (Summary)

No new costs will occur as a result of this proposed rule. The expedited enforcement process benefits regulated entities by reducing staff time in paperwork response and legal fees addressing formal enforcement actions for minor violations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment will result from this proposed rule.

Signature of Agency Head or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Legislative Fiscal Officer or Designee

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule adds additional violations to the expedited penalty table in LAC 33:I.807, clarifies various existing violations, and adjusts existing penalty amounts to be consistent for similar violations. The structure of the expedited penalty table is changed to divide it into separate tables by media and type.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

These amendments will abate delays that have occurred in correcting violations of the Environmental Quality Act concerning the unauthorized transporting, disposal, and/or burning of solid wastes, violations of the UST delivery prohibition rule required by the federal Underground Storage Tank Compliance Act of 2005, and other various violations of the environmental quality regulations. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. In the recent past, complaints of unauthorized disposal and burning of solid wastes have increased considerably, especially in the hurricane-impacted areas. This proposed rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The Expedited Penalty Agreement Program is a flexible program that will be continually expanded to accommodate minor to moderate violations of the regulations.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No increase in the expenditure of funds should occur.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ☐ Yes. If yes, attach documentation.

(b) ☐ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY07-08	FY08-09	FY09-10
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rule will enhance the current program with no additional cost. The Expedited Penalty Agreement program has produced a significant decrease in the backlog of enforcement action referrals for the categories of violations this proposed rule addresses. Many prior enforcement referrals for minor and moderate violations had not been addressed in a timely manner due to more complex enforcement issues taking precedence. The ability to address these classes of violations with expedited penalty agreements has resulted in savings in staff time and paperwork.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The department has sufficient funding to implement the proposed rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The percentage of total penalties incurred by local government for the added violations is relatively small. The expedited enforcement process benefits regulated entities by reducing staff time and cost due to

reductions in paperwork and legal fees addressing formal enforcement actions, thereby making more funds and staff time available for complying with environmental rules.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

Funding sources for environmental management may experience a slight savings due to the reduction of personnel time spent on paperwork responding to formal enforcement actions for the added violations.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	Minimal	Minimal	Minimal
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	Minimal	Minimal	Minimal

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The violations being added to the expedited penalty program by the proposed rule do not impose high-value penalties, and, experience has shown, will have a higher rate of collection as a result of the Expedited Penalty Agreement Program. Therefore, there will be a minimal increase in revenue to the department.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

No new costs will occur as a result of this proposed rule. The expedited enforcement process benefits regulated entities by reducing staff time in paperwork response and legal fees addressing formal enforcement actions for minor violations.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Savings could be realized by regulated entities committing these minor to moderate environmental violations that will result in expedited penalty agreements. The expedited penalties incurred for these violations are, in most cases, lower than formal penalties. To the extent that penalty and administrative costs to private enterprises are decreased, their net income could be increased.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

No effect on competition or employment will result from this proposed rule.